

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

STAFF REPORT

Hearing Date/Agenda Number
3/10/04 Item: 4.d.

File Number
CP03-073 & ABC04-001

Application Type
Conditional Use Permit and
Liquor License Exception Permit

Council District
6

Planning Area
West Valley

Assessor's Parcel Number(s)
274-47-074

PROJECT DESCRIPTION

Completed by: Erin Morris

Location: Northwest corner of Forest Avenue and Beechwood Avenue (2475 Forest Avenue)

Gross Acreage: 0.36

Net Acreage: 0.36

Net Density: n/a

Existing Zoning: CG Commercial
General

Existing Use: Commercial strip center

Proposed Zoning: n/a

Proposed Use: Sale of alcoholic beverages for off-site consumption
and tenant and site improvements

GENERAL PLAN

Completed by: ELM

Land Use/Transportation Diagram Designation
Medium Low Density Residential (8 DU/AC)

Project Conformance:
☒ Yes ☐ No
☐ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: ELM

North: Single family residential

R-1-8 Residence District

East: Office

CO Commercial Office

South: Westfield Valley Fair mall

CG Commercial General

West: Restaurant

CG Commercial General

ENVIRONMENTAL STATUS

Completed by: ELM

☐ Environmental Impact Report found complete
☐ Negative Declaration circulated on
☐ Negative Declaration adopted on

☒ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: ELM

PUBLIC AGENCY COMMENTS RECEIVED**Completed by: ELM**

Department of Public Works

See attached memorandum.

Other Departments and Agencies

See attached memoranda from the Police Department and the Fire Department.

GENERAL CORRESPONDENCE

See attached correspondence from Lloyd Benson dated February 26, 2004; Toni Sindelar dated February 27, 2004; Megan Doyle dated February 27, 2004; Linda DeWald dated March 1, 2004; Toni Sindelar dated March 1, 2004; Linda DeWald dated March 1, 2004; Ken Braly dated March 2, 2004; May Hluboky dated March 2, 2004; John Hluboky dated March 2, 2004; Linda DeWald dated March 3, 2004 with petition signed by 163 residents

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, Bertram Berns, is requesting a Conditional Use Permit and Liquor License Exception Permit to allow the sale of alcoholic beverages for off-site consumption at a convenience market in an existing commercial strip shopping center located on the northwest corner of Forest and Beechwood Avenues. The applicant is also proposing site and tenant improvements.

The Zoning Ordinance requires a Conditional Use Permit for off-sale of alcoholic beverages in the CG Commercial General Zoning District. A Liquor License Exception Permit is also required because the California State Department of Alcoholic Beverage Control has determined that the proposed establishment involving the off-sale of alcoholic beverages is located in a census tract in which the ratio of existing off-sale liquor licenses to the tract's population is higher than the average for the County. In addition, the Police Department has determined that the reported crime statistics for the Police Beat in which the proposed establishment is located are over the 20% crime index.

during normal business hours; this application does not include a request for after-midnight operation.

ENVIRONMENTAL REVIEW

The Director of Planning has determined that this project is exempt from environmental review under the provisions of the California Environmental Quality Act pursuant to Section 15332 which pertains to infill development projects that conform to applicable land use regulations. The proposed project is consistent with this section in that the project involves site modification and commercial uses on a small urban site where all necessary services are existing.

GENERAL PLAN CONFORMANCE

A portion of the existing retail center has a General Plan Land Use/Transportation Diagram designation of General Commercial, however the portion which includes the subject tenant space has a designation of Medium Low Density Residential (8 DU/AC). The General Plan states that “any developed parcel of two acres or less is deemed to be in conformance with the General Plan regardless of how it is designated.” Based on the fact that the subject parcel is less than two acres in size and is developed with an existing commercial building that would continue to be used under this proposal, the proposal is deemed to be in conformance with the General Plan.

PUBLIC OUTREACH

A community meeting was held on March 1, 2004. Owners and tenants of property within a 500-foot radius of the subject site received a community meeting notice. Approximately 30 people attended the meeting. Community members expressed numerous concerns about the proposed off-sale of alcohol including concern about noise, public safety and traffic impacts. Staff has received numerous telephone calls regarding the project and many letters and e-mails (see attached) including a petition in opposition to the project signed by 163 residents.

A notice of the Planning Commission public hearing was mailed to all owners and tenants of property within a 500-foot radius of the project site. Staff has been available to discuss the project with members of the public.

ANALYSIS

The key issues analyzed for the proposed project include conformance to the Zoning Ordinance regulations related to the off-sale of alcoholic beverages and Liquor License Exception findings

1. *For such a use at a location closer than 500 feet from any other such use either within or outside the City that the proposed location of the off-sale alcohol use would not contribute to an excess concentration of establishments which sell alcoholic beverages.*
2. *For such a use at a location closer than 500 feet from any child care center, elementary school, secondary school, college or university, or one hundred fifty (150) feet from any residentially zoned property that the building in which the proposed use is to be located is situated and oriented in such a manner that would not adversely affect such residential and/or school use.*

The proposed use is not located within 500 feet of any other off-sale premises. There are no schools or licensed day care centers within 500 feet of the site. The site is located adjacent to a residential neighborhood comprised of single-family detached houses. Residents of the neighborhood have expressed concern that the use will encourage loitering and nuisance activities that will impact the residential neighborhood.

The existing commercial building and associated parking lot are on a shallow lot immediately adjacent to single-family uses. While the existing commercial building is oriented toward Forest Avenue and away from the residential neighborhood, the project, as proposed, is not situated so that it would prevent potential detrimental impacts of the alcohol sales on the residential properties. In an effort to enhance the existing site, the applicant is proposing to install a new trash enclosure, landscaping, and a façade upgrade to improve the appearance and function of the existing commercial strip center. Staff believes that while this would improve some of the existing site conditions, the current proposal provides no method of controlling negative behaviors or activity associated with the off-sale of alcohol, in that there is little buffering between the proposed convenience market with off-sale of alcohol and the adjoining residential neighborhood.

Liquor License Exception Permit findings

In order to grant a Liquor License Exception, the Planning Commission must make a determination of public convenience and necessity for the subject liquor license. The City has developed criteria for evaluating Exceptions that assess specific criteria including: the location of the proposed use, the interface between the proposed use and adjoining sensitive uses, the Police Department's recommendation, and conformance with the Zoning Ordinance.

As discussed above, staff does not believe that the proposed use conforms to the Zoning Ordinance requirements for issuance of a Conditional Use Permit for off-sale of alcohol in that

RECOMMENDATION

The Planning staff recommends that the Planning Commission deny the requested Conditional Use Permit and Liquor License Exception Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. The project site is located on the northwest corner of Forest Avenue and Beechwood Avenue.
2. The site has a designation of Medium Low Density Residential (8 DU/AC) on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
3. The project site is located in the CG Commercial General Zoning District.
4. The project proposes the sale of alcoholic beverages for off-site consumption.
5. The Zoning Ordinance requires a Conditional Use Permit for the sale of alcoholic beverages for off-site consumption in the CG Commercial General Zoning District.
6. A Conditional Use Permit may be issued for the off-sale of alcoholic beverages if the Planning Commission makes the findings required by San José Municipal Code Sections 20.80.900 and 20.100.720.
7. The proposed use is not located within 500 feet of another establishment that sells alcoholic beverages for off-sale consumption.
8. The proposed use is not located within 500 feet of a licensed childcare center or school.
9. The proposed use is located within 150 feet of residentially-zoned property.
10. The project site is located within census tract 5058.00.
11. The subject site is located in one of the census tracts where the ratio of existing off-sale liquor licenses to the tract's population is higher than the average for the County.
12. The site is located in an area with an over 20% crime index.

15. The site is directly adjacent to single family residences and the use is not buffered, situated, or oriented in such a way as to prevent adverse impacts on adjoining residential uses.
16. The proposed project is not located in the Downtown Core Area, in an existing Project Crackdown/Weed and See Area, or in a similar area which qualifies for these programs on the City's Neighborhood Revitalization Strategy. The project is not proximate to a public or private school (preschool through high school).
17. The surrounding neighborhood residents have expressed concern that the use will encourage loitering and nuisance activities that will impact the residential neighborhood and have indicated that there are numerous other outlets for purchasing alcohol for off-site consumption within the immediate area.
18. The applicant has furnished no evidence that the finding of public convenience and necessity can be made.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José, in that the site is less than two acres and is developed with an urban use.
2. The building in which the proposed use is to be located *is* situated and oriented in such a manner that it **may** adversely affect such residential and/or school use.
3. The proposed project does not comply with all applicable provisions of the Zoning Ordinance in that the proposal is **not** consistent the required findings for the off-sale of alcohol.
4. No finding of public convenience and necessity can be made to support issuance of a Liquor License Exception permit.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested **will**

a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working

3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, the Conditional Use Permit is hereby denied.

Attachments:

Location map

Correspondence